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International Court of Justice

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OFFICIAL TRANSCRIPT of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 6 March 1946, 1000-1300, Lord Justice Lawrence, presiding.

THE PRESIDENT: I desire to announce a slight change in the order of business.

Dr. Stahmer has made a motion in writing, stating that he desired a little more time in the preparation of his documents and for other reasons would be grateful if the case of the defendant Goering did not come on on Thursday, as announced.

The Tribunal realizes that the case of the first defendant to be heard may present some difficulties in getting the documents translated in time. As the Tribunal had announced that they would continue the hearing of the applications for witnesses until they were all completed, they will adhere to this decision. It is anticipated that this will give Dr. Stahmer one day more, but at the conclusion of the hearing of the applications for witnesses, the case of the defendant Goering will come on without delay.

The Tribunal wishes to make it quite clear that no further applications for delay or postponement on the part of the defendants will be entertained, save in the most exceptional circumstances.

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DR. SIEMERS (Counsel for the Defendant Raeder): For the Defendant Raeder, I should like to call as first witness, a witness who can give testimony regarding the Defendant's personal character.

SIR DAVID MAXWELL-FYFE: My Lord, if it would be convenient, I might first indicate the views of the Prosecution and then Dr. Siemers can deal with this point.

The Prosecution has no objection to the following witnesses being called for oral testimony:

No. 2, the retired Minister, Karl Severing.

No. 5, Vice-Admiral Schulte-Moenting.

No. 6 has been already sought and not objected to by the Prosecution, to be called for the Defendant Doenitz.

And No. 10, Admiral Hermann Boehm.

Then with regard to the following witnesses, the Prosecution suggests an affidavit as the suitable procedure:

No. 2, Vice-Admiral Lohmann --

THE PRESIDENT: Do you mean an affidavit or interrogatories?

SIR DAVID MAXWELL-FYFE: In this case I should prefer an affidavit, because it is only a history of past events that is involved.

THE PRESIDENT: Affidavit in which case?

SIR DAVID MAXWELL-FYFE: That is in the case of Lohmann, No. 2.

Then with regard to No. 4, Grand Admiral Albrecht, his evidence covers the same ground as No. 5. It might be that interrogatories were more convenient, but that would be a matter for my friends.

Then the next number, 7. That is Dr. Suechting, who is an engineer. It is desired to have him speak about the Naval Treaties and questions of construction. The Prosecution suggests an affidavit will be suitable there, because apparently it is desired that he speak on technical matters.

No. 8, Field Marshal von Blomberg, I am told, is ill. And I think that Dr. Siemers has submitted questions and answers already. He ought to be dealt with by interrogatories. Probably it is the easiest thing for the Field Marshal and the most suitable.

THE PRESIDENT: Wasn't that suggested in the case of one of the other defendants?

SIR DAVID MAXWELL-FYFE: von Blomberg, yes. I have a note that

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Defendants' Counsel have submitted questions. I wasn't quite sure whether by Dr. Siemers or another. I think it was Dr. Nelte, for Keitel.

THE PRESIDENT: I think so. That is No. 8.

SIR DAVID MAXWELL-FYFE: Then the next one, von Weizsaecker, who was the Secretary of State at the Foreign Office. He is requested with regard to the Athenia case. At the moment I can't see the point for which the Defense want this gentleman, but I suggest that if they get an affidavit from Weizsaecker we should know what he can speak about.

Then the other one is No. 14, Colonel Soltmann. It is desired to give the results of the interrogation of certain British prisoners-of-war at Lillehammer. It would appear that the object was merely to give further evidence which would be cumulative to the statements in the German White Book and therefore the Prosecution suggests an affidavit.

There are two witnesses that the Prosecution thinks are in the broader line between admissibility and affidavits. They are really, in the submission of the Prosecution, not relevant witnesses, but the Tribunal might like to consider the question. These are No. 1, a naval chaplain who really speaks as to the general moral and religious outlook of the Defendant Raeder. That is, in the submission of the Prosecution, really irrelevant; but at the most it would be a matter for an affidavit. The Prosecution's position is that it is really irrelevant but it certainly should not be more than an affidavit, even if a different view was taken.

The other is No. 16, Admiral Schultze. He is to speak with regard to an interview with the late Admiral Darlan, and it is submitted that that is irrelevant; but, granting it any approach to relevance -- which the Prosecution has not been able to see -- that it is only a matter for an affidavit.

The Prosecution submits that the following are unnecessary:

Nos. 11 --

THE PRESIDENT: Dealing with No. 16, wouldn't that be more suitably dealt with by interrogatories. I see that the Tribunal granted interrogatories in that case, but I suppose they haven't yet been produced.

SIR DAVID MAXWELL-FYFE: Which one?

THE PRESIDENT: No. 16.

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SIR DAVID MAXWELL-FYFE: Yes. Well, if the Tribunal feelthat it is a matter that should be explored I agree that interrogatories would be suitable.

Then, My Lord, the ones that the Prosecution make objection to in toto are:

No. 11, Vice-Admiral Gottlieb Buerkner, because cumulative of Nos. 5 and 10.

No. 12, Lt. Commander Schreiber, because on the 21st of February Dr. Siemers said that he was willing not to call this witness, if No. 5, Schulte-Moenting, was allowed.

No. 13, Hugo Lackorn, who is a Norwegian merchant, who is supposed to speak of Allied plans, without any means of knowledge being stated. This witness was temporarily given up on the 21st of February.

No. 15, Alf Whist, who was Secretary of Commerce in the Quisling Cabinet, as I understand the application. There is no indication why this witness should be competent on the case of the Defendant Raeder.

And No. 16 has been dealt with.

No. 17 is Colonel Goldenberg, who was the interpreter at the meeting between the Defendant Raeder and Darlan. The Defendant Raeder gives evidence and Admiral Schultze answers interrogatories. It wi ll appear that interview was well covered.

THE PRESIDENT: Yes, Dr. Siemers?

DR. SIEMERS: I thank Sir David for taking up the individual points, as a consequence of which I can, as I presume, dispense with further discussion of the points to which he has agreed and confine myself to those on which he has disagreed.

THE PRESIDENT: The Tribunal thinks the best course would be for you to go through the ones upon which Sir David has not agreed, which could have been called as oral witnesses, and then perhaps it might be necessary to deal with the ones on which he has agreed. If you will begin in the order in which he took them up -- 2, 4, 7, 8, 9 -- if that is convenient to you.

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THE PRESIDENT: In Case Two he suggested an affidavit.

DR. SIEMERS: Number Two is Vice Admiral Lohmann. In this connection I refer to the last page of my brief, on which I have discussed the documents under Roman Numeral III. There I have stated that I suggested to the British Delegation that we come to some agreement regarding the Treaty of Versailles and the Naval Treaty. The British Delegation has given me reason to think that we can reach this understanding and has communicated with the British Admiralty in London on this matter.

If this understanding is reached, I am agreeable to the proposition that Vice Admiral Lohmann should then submit only an affidavit, since he would then have to testify on only a few points. I ask, therefore, thathe be approved for the time being, and whether or not I renounce calling him will depend on this understanding with the Prosecution. If this understanding is not reached, then the proof of a considerable number of points would become very difficult, and then I could not renounce Lohmann as a witness.

THE PRESIDENT: What do you say about that, Sir David?

SIRDAVID MAXWELL-FYFE: I have circulated Dr. Siemers' note and request for agreement to my colleagues, and I have also consulted the Admiralty, and I hope that we may be able to give the information and probably to agree on these matters, but I am waiting to get that confirmed from the Admiralty in Britain, so I think that if we could leave over the question of this witness until I see if I can get an agreement which will satisfy Dr. Siemers on the point --

THE PRESIDENT: Yes. Then if you cannot make the agreement, probably the witness would have to be called?

SIR DAVID MAXWELL-FYFE: Yes. I can let Dr. Siemers know whether there is any controversy on the point, whether I am going to challenge what he puts forward. If I am going to challenge it, I should not object to the witness being called.

DR. SIEMERS: Under the circumstances, I shall be satisfied with the submission of an affidavit. I have written to Vice Admiral Lohmann, asking him to answer certain minor questions, and in the matter of the main questions

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I shall adhere to the principles just stated by Sir David.

THE PRESIDENT: Very well.

DR. SIEMERS: Witness Number Four, Grand Admiral Albrecht, was one of the closest collaborators with Grand Admiral Raeder. From 1926 to 1928 he was Raeder's Chief of Staff in Kiel, from 1928 to 1930, Chief of the Navy Personnel Office of the OKM. From then on he was Commanding Admiral in Kiel, and finally Navy Commander East from 1939.

I should like to remark in this connection that in these last years, he was also commander in chief in charge of organization. Consequently, his testimony appears important to me. General Admiral Albrecht has also written to the Tribunal in this connection.

Albrecht has known the Defendant Raeder so long that he is personally familiar with Raeder's main notions. He knows Raeder's train of thought, has known it since 1928. That is to say, from that point on when the accusations against Raeder of the Prosecution begin.

It should be observed that these extraordinary accusations are

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directed against RAeder during a period of 15 years. I cannot refute all the accusations with just one or two witnesses. The number of points taken up by these various witnesses are so various that we cannot speak of them as cumulative.

I should also like to say that, of those witnesses already approved by the Tribunal and by the Prosecution, particularly Schulte-Moenting, the Tribunal has not yet informed me in this connection where Schulte-Moenting is. I presume that he is in a prisoner of war camp in England, but I do not know whether he is really at my disposal and whether I can get in touch with him in time.

THE PRESIDENT: You were dealing with Grand Admiral Konrad Albrecht, were you not? You are dealing with Number Four?

DR. SIEMERS: Regarding Albrecht, we know that he is in Hamburg, I simply pointed out that it would not be cumulative if both Albrecht and Schulte-Moenting are heard by the Court.

THE PRESIDENT: You see, what Sir David is suggesting was an interrogatory in the case of Admiral Albrecht and an affidavit in the case of Admiral Schulte-Moenting.

SIR DAVID MAXWELL-FYFE: I will agree to Admiral Schulte-Moenting being called orally.

THE PRESIDENT: I beg your pardon. I was mixing the numbers. Yes, that is right, to call the one and have interrogatories from the others. Have you any objection to that?

DR. SIEMERS: I request that I be able to call both as witnesses. Schulte-Moenting will testify regarding a later period, Albrecht of the period immediately subsequent to the Versailles Treaty. Their testimony is very different.

It should also be said, as I just pointed out, that the Tribunal has not yet informed me whether I can with absolute certainty count on Schulte-Moenting, in other words, whether he has been found, whether it is known where he is.

THE PRESIDENT: Our information is that he is not located, Schulte-Moenting.

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DR. SIEMERS: I have no information.

THE PRESIDENT: I am not sure thatis right. Yes, he has been located in a prisoner of war camp in the United Kingdom. At least, I think so.

Yes, I have a document before me here which shows that he is in a prisoner of war camp in the United Kingdom.

DR. SIEMERS: I thank you. I had not known that, and under these circumstances I am prepared, in regard to General Admiral Albrecht, to satisfy myself with an affidavit or an interrogatory on the proposition that Schule-Moenting really turns up.

Number Seven, Dr. Suechting. I shall be satisfied with an affidavit in this case to speed up the trial.

THE PRESIDENT: Yes.

DR. SIEMERS: Under the one condition that this matter will be clarified between me and the British Prosecution, as stated first in connection with Admiral Lohmann. I believe that Sir David is agreeable to this.

THE PRESIDENT: The Tribunal would like to know how you suggest that these questions of shipbuilding in connection with the German-English Naval Agreements of 1935 and 1937 are relevant to any charge made here.

DR. SIEMERS: The Defendant Raeder is accused of having broken the Treaty of Versailles and the Naval Agreements. In the violation of such treaties, it is usually a question of shipbuilding. Consequently, I must prove what was permissible according to the Treaty of Versailles and the Naval Agreements and what was actually built, and what basic principles guided the naval policy. As I said, I would be satisfied to submit an affidavit in this case.

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THE PRESIDENT: Very well, the Tribunal will consider the arguments or that.

DR. SIEMERS: No.8, Fieldmarshal von Blomberg. The Prosuection suggests an affidavit or an interrogatory in consideration of von Blomberg's state of health. I am agreeable to this for the sake of simplicity and I suggest an affidavit since I have no very complicated questions to put to him.

No. 9, Ambassador von Weizsaecker. I made the application on Februa 6th. So far I have not received an answer from the Tribunal. In the case of the ship "Athenia", at that time Weizsaecker was State Secretary in the Reich Ministry for Foreign Affairs. At that time, in September 1939, Weizsaecker communited with the American Ambassador on the subject of the Athenia. Weizsaecker spoke with Hitler and with Raeder. He knows the details and must heard on these details. I do not believe that an affidavit would suffice. Let me remark in passing that I do not now know where Weizsaecker is, but asi from that, the accusation against Raeder in the case of the Athenia is of som criminality from an ethical point of view that the evidence here could not be of a restricting factual nature and this moral point must be given considera contention.

The British delegation in the case of the Athenia has emphasized particularly and made insulting attacks on the defendant in this matter. In view of the irreproachable life of my client, I feel obliged to clarify this case utterly.

THE PRESIDENT: Dr. Siemers, as far as the application, there is nothing to show beyond the position of the suggested witness that he knew anything about it at all, and under those circumstances would not interrogatories be the most appropriate course? You did not show whether he did know anything about it at all. You say in your application that he was State Secretary in the Reich Ministry for Foreign Affairs.

DR. SIEMERS: Let me point out that in my application I stated that the witness is informed regarding the events connected with the case Athenia.

THE PRESIDENT: You say on the basis of his position as State

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Secretary that he must know.

DR. SIEMERS: The American Ambassador immediately after the Athenia case got in touch with Weizsaecker in order to clarify that case. Thereupon Weizsaecker spoke with Raeder, after he had already, however, told the American Ambassador that no German submarines had anything to do with that case. The classification of the Athenia case in which a German submarine was involved occurred only later. Previous to that Raeder had not known of it. The return of the U-boat took place on the 27th of September. The sinking took place on the 3rd of September.

THE PRESIDENT: Did you state those facts about the conversations between the American Ambassador and the Ambassador Weizsaecker in a previous application?

DR. SIEMERS: No, but on the 6th of February I did make an application, but also mentioned in general terms as regards the Athenia case. Let me add, Weizsaecker knows also the subsequent occurrences.

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He knows very well that the Navy and particularly the defendant Raeder had nothing to do with the article which the propaganda ministry had published in the newspapers. Weizsaecker was just as outraged by this article as the defendant Raeder was, but it precisely this of which the Prosecution accuses Raeder.

THE PRESIDENT: Well, the Tribunal will consider what you say.

DR. SIEMERS: Let me add that I made a mistake. I just heard that Weizsaecker is still with the Vatican in Rome; in other words, it is known where he is.

THE PRESIDENT: Yes.

DR. SIEMERS: No. 14, Colonel Soltmann. So far as I know, Colonel Soltmann is also to be called as a witness by the defendant Jodl. He has already been sent an affidavit or an interrogatory. I am consequently agreed with Sir David that such will suffice in the case of Soltmann, depending on the agreement of defense counsel for Jodl.

THE PRESIDENT: He does not appear to be located yet.

DR. SIEMERS: The witness Soltmann is not located? I have his address.

THE PRESIDENT: Have you?

DR. SIEMERS: I gave it to you in my application. It is Falkenberg near Moosach in Upper Bavaria.

No. 16, General Admiral Schultze. Schultze is in Hamburg. The Prosecuti has accused the defendant Raeder of participating in the National Socialist policy of conquest. This accusation is unfounded. Raeder in Norway, as well as in France, worked industriously to bring about peace; in other words, to carry out no definitive conquest of any country. Raeder was in strong opposition to Hitler andit was only after much urging that Raeder succeeded in speaking to Darlan in Paris regarding peace negotiations. I believe that such a positive attitude in favor of a rapid conclusion of the war is important enough to be testified to by a witness in a trial so important as this one. I cannot understand how Sir David, in view of his accusation, can say that this point is irrelevant. The Prosecution has repeatedly declared that the defendant Raeder was --

THE PRESIDENT: I do not believe that Sir David said it was irrelevant. He suggested interrogatories.

DR. SIEMERS: I made a note here that Sir David said that the witness was irrelevant, but he would be agreeable to an affidavit.

THE PRESIDENT. I was wrong.

DR. SIEMERS: I simply wanted to take the position on the question as to whether or not this witness is irrelevant. I believe I have done so.

THE PRESIDENT: You want the witness? You would not agree to an affidavit or an interrogatory? I s that right?

DR. SIEMERS: I ask the Tribunal to call Schultze as a witness here in Nurnberg because he can give testimony on a definitive point in my case, to wit, Raeder's attitude toward the war as a whole, and can do so from first-hand observation rather than from hearsay.

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I come now to the witnesses as to whom Sir David had objection.

Witness Number 11, Vice Admiral Buerkner. I asked for him on the 31st of January. So far I have received no answer. I asked to be allowed to speak to the witness, Buerkner, so that I could acquaint myself with the details. This was rejected.

I object to Sir David's objection until I can speak to this witness. I ask, first of all, that he be approved so that I can speak with him. Only then can I take a decisive attitude toward whether I want him as a witness. If it then turns out as Sir David is of the opinion, that his evidence is cumulative, then I am willing to forego him. I presume that Sir David is agreeable to this.

THE PRESIDENT: Sir David, the Tribunal doesn't quite understand why counsel shouldn't have seen this officer who is in prison in Nurnberg, subject of course to security.

SIR DAVID MAXWELL-FYFE: We have no objection to counsel seeing Admiral Buerkner. I think up to now the Prosecution have always taken the view that what Dr. Siemers was wanting to see him about was not relevant. I don't think the Tribunal has ruled on that.

THE PRESIDENT: The view of the Tribunal is that counsel for the Defense ought to be in touch with the witnesses before in order to see whether they are able to give relevant evidence or not. They can't give the evidence or the relevancy of it unless they know what the witness is going to say.

SIR DAVID MAXWELL-FYFE: No objection will be made, and Dr. Siemers can make arrangement, as far as the Prosecution is concerned, to see Admiral Buerkner at the earliest date he likes.

DR. SIEMERS: I thank the Tribunal for clarifying this point. This point has made greatly more difficult the work of the Defense Counsel. I have been waiting for more than a month to be able to speak to Buerkner. For four weeks I was not able to speak to Admiral Wagner. There are others to whom I should like to speak who are in the court house prison, but so far in all these cases permission has been refused me. I believe that now the point is clarified.

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THE PRESIDENT: Go on, Dr. Siemers.

DR. SIEMERS: There is the possibility that after speaking with these witnesses I shall not want to call them, particularly since I hear today that Schulte-Moenting can be called, and on the supposition that Boehm will be approved.

THE PRESIDENT: That who will be approved?

DR. SIEMERS: Boehm, Number 10.

THE PRESIDENT: Oh, yes. That was Sir David's only objection to Number 11, wasn't it, that it was cumulative to 5 and 10?

DR. SIEMERS: Number 12, Schreiber. Sir David pointed out correctly--I agree with Sir David in this--that if actually Schulte-Moenting and the witness Boehm can be called Schrieber is, in point of fact, not necessary.

Number 13, the witness Lackorn in Leipzig. Before the occupation of Norway, Lackorn was on business in Oslo. He has nothing to do with the military. It is purely by accident that he found out in the Hotel Bristol in Oslo that the landing of the English troops was immediately imminent. This point is important for this reason, because here we can find out the attitude of the defendant in the matter of Norway and can judge it only if we know the entire situation in Norway at that time. The entire situation in Norway, however, means the relations between Norway and Germany, England, Sweden, and all the other neighboring countries. It will not do on so important a point simply to declare that it is only a question of a small sector.

I understand that the witness cannot be heard here. Since I expected this attitude on the part of the Prosecution, I have written to this witness for an affidavit and am agreeable if simply an affidavit is submitted here. He does not have to come personally as a witness.

THE PRESIDENT; Sir David, you didn't deal with that aspect of the matter, if there was an affidavit.

SIR DAVID MAXWELL-FYFE: Well, my Lord, I am afraid the view of the Prosecution is that the story, which apparently started in the bar of a hotel in Oslo, is not evidence which is really admissible,

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relevant or of any weight in a matter of this kind. That is the view we have taken throughout.

THE PRESIDENT: Dr. Siemers, it appears from the application which is before us that you originally made a request for this witness on the 19th of January 1946, which appears to have been in perfectly general terms, and that the Tribunal ordered on the 14th of February that you should furnish supplementary details of the evidence which you wanted to call through this witness. Thereupon, on the 21st of February, you withdrew your application.

You now put in the application again without giving any details at all, simply saying that the witness had been in Oslo on business and received information there of the imminent landing of Allied forces in Norway. Well, that is a perfectly general statement, just as general as the original statement. It doesn't seem to comply with the orders of the Tribunal at all.

DR. SIEMERS: On the 21st of February, I withdrew my application in view of the basic point of view that I have told the Court about. I pointed out that in my opinion it cannot be asked of the Defense that they provide each individual detail, after we were consulted for over three months on no single witness called by the Prosecution. Nor did we have the slightest word to say in the conduct of the Prosecution. We were not given any opportunity by the Prosecution to take an attitude on the relevancy of their witnesses.

THE PRESIDENT: I have already pointed out on several occasions that the reason why Defendants' counsel have to submit applications for their witnesses is because they are

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unable to get their witnesses themselves and because they are applying to the Tribunal to get their witnesses for them and their documents for them. It is a work of very considerable magnitude to find and to bring witnesses to Nurnberg.

I understand from you that with reference to this witness you are trying now to get an affidavit from him.

DR. SIEMERS: Yes. At any rate, I have made the effort. Whether I shall receive an answer in time from Leipzig I do not know. In the meantime, to make the matter easier and to avoid delay, I wrote to the witness Lackorn.

THE PRESIDENT: Yes.

DR. SIEMERS: I hope that an affidavit will be available in time. If so, I am perfectly prepared to renounce hearing him here in person.

THE PRESIDENT: If you get the affidavit you will be able to give the Tribunal particulars of the evidence which the witness would give, and also show it to the Prosecution, who would then be able to say whether they wished to have the witnesses brought here for cross-examination.

DR. SIEMERS: Certainly.

THE PRESIDENT: Well, the Tribunal will consider this application.

DR. SIEMERS: Witness, Number 15, Alf Whist, former Secretary of Commerce. On the order of the Court of the 14th of February he was rejected as irrelevant.

Whist can testify that the attitude toward the German Navy in Norway throughout the occupation was very good, and that their behavior was very good. The Norwegians objected solely to the civil administration and not to the German Navy.

Whist knows, as does every other Norwegian, that the Navy took part in no single illegal or criminal measure during the occupation.

I presume that Sir David means in his objection that the Navy during the occupation -- of course this is a question that must be sharply distinguished from the question of the occupation and the attack on Norway. I am speaking now only of the time after the occupation had begun.

SIR DAVID MAXWELL-FYFE: The point of the Prosecution is this: That whatever the facts were, assuming for the moment that the facts were that

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the German Navy, had behaved with meticulous correctness on every point, the view of Mr. Alf Whist, who was Secretary of Commerce in the Quisling Cabinet of Ministry in Norway, as to how the German Navy behaved would not have the slightest interest or relevance or weight with anyone. That is the view of the Prosecution.

DR. SIEMERS: I had hoped that Sir David would take a position towards the question whether accusations can be directed toward the Navy in this regard. I should like to ask you to observe that the entire administration of Norway lay with Terboven and that the German Navy had nothing to do with this administration. If I have named a single witness where I right have called hundreds, I did this only to give the Tribunal a picture of how Admiral Boehm and Raeder behaved in this regard.

THE PRESIDENT: The Tribunal will consider it, Dr. Siemers.

DR. SIEMERS: Yes, thank you.

THE PRESIDENT: Then you have got 17, the interpreter.

DR. SIEMERS: Regarding Lt. Colonel Goldenberg, it is Sir David's point of view that he is unnecessary; if Schultze is approved an affidavit is enough from Goldenberg. A short affidavit appears to be important to me, because Goldenberg as an impartial interpreter was also present at every conference between Darlan and Raeder. An affidavit would suffice.

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THE PRESIDENT: I think you can pass now to your documents. I ought to call your attention to an observation at the end of your application, which is that you intend to summon one or more witnesses. Who are they? You say you intend to summon one or more witnesses.

DR. SIEMERS: There would be a witness. The high Tribunal has declared that the details about a witness are submitted a long time before the case actually comes up because the Tribunal must produce the witness. If it is a question of a witness who comes on his own initiative to Nurnberg, then it can be decided on this point in connection with my whole case whether the witness will be admitted by the Court of not.

THE PRESIDENT: Dr. Siemers, I have stated one of the reasons why, one of the prinicpal reasons why Defense Counsel have to make applicatinns, and another prinicpal reasons is a necessity for expedition in this trial; expedition and security. I am reminded of the question of security; and therefore, we must insist on being told who the witnesses are that you wish to call. Dr. Siemers, you will not be able to call them.

DR. SIEMERS: Am I thn obliged, if the witness is here in the building, to name him?

THE PRESIDENT: Certainly, because, as I have told you, there are twenty or twenty-one defendants in the dock and we have to try and make this trial expeditious and we, therefore, can't allow them to call as many witnesses as they choose to call; but if it is a question of your not having the names of the witnesses in your mind at the moment, you can certainly specify them after a short delay or tomorrow.

DR. SIEMERS: I shall shortly make a statement on this matter. I haven't spoken of the witness. I shall give further information regarding this point shortly, as I'd like to speak to the witness in question first.

THE PRESIDENT: Dr. Siemers, the Tribunal has no objection to your replying in respect of other witnesses, provided that you do so by tomorrow.

DR. SIEMERS: Very well, I know that at the moment the witness in question is not in Nurnberg. At the moment I cannot ask him. I consequently ask the Tribunal to pardon me for being too careful. The Tribunal knows that witnesses are taken into custody. I cannot be responsible for making it difficult for

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anyone, because of my calling him as a witness, and that is the reason that I should tell you immediately, as soon as the witness is in Nurnberg and I can speak to him, that will be within twnety-four hours. It is here a question of testimony which would take at the most ten minutes of the Court's time. I do not believe that this could be considered burdensome to the Tribunal.

THE PRESIDENT: Very well.

DR. SIEMERS: Then I should only like to add that in the case of Severing, I can give his address. I received it yesterday by telegraph. Here is No. 3; and the prosecution is agreeable to his being heard. I can give you this address in writing. It is in Bielefeld.

THE PRESIDENT: Yes. Provided you give it to the prosecution and provided you give it to the General Secretary, that is all that is required; and now would probably be a convenient time to break off for ten minutes.

MR. DODD: Just a minute, your Honor. It is a matter of Admiral Buerkner now. So far as we know, Dr. Siemers has made one request about Admiral Buerkner sometime ago and at a time when he was told, as I understand it, that Admiral Buerkner was intended to be called or that the prosecution intended to call him as a witness and that, therefore, we do not think it is proper for him to talk to Admiral Buerkner until after we had called him as a witness.

Up to a very late date in this presentation of our case, we still had in mind calling Admiral Buerkner. I think some reference was made about him, as a matter of fact, before the Tribunal, with reference to the witness Lahousen and it was for that reason that we told Dr. Siemers that we didn't think he should talk to the witness until after he had testified or a decision had been made with reference to his testimony; but we have at all times tried to co-operated with the defense and make available those people who are here in custody so that they may talk with them.

THE PRESIDENT: We will adjourn now for ten minutes.

(A recess was taken)

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DR. SIEMERS: Regarding the witness, May I say one more thing concerning witness No.1, Marinedekan, that I won't call him as a witness, I agree to use an affidavit. Concerning the witness Buerkner, I would like to mention that the information received from Mr. Dodd is based on an error. I was not permitted to speak to the witness, because the witness had not been granted to me as my witness. No other reason was given. Furthermore--

THE PRESIDENT: We don't think any further discussion is necessary about this witness. I have already stated what the members of the Tribunal will act upon.

DR. SIEMERS: I only don't understand whether Mr. Dodd agrees now that I may speak to the witness Buerkner.

THE PRESIDENT: I think he said so. He said the prosecution closed their case, and that now they have no longer any objection to your seeing the witness.

DR. SIEMERS: Then as the last remark the Tribunal will have noticed that I have not called any witness concerning naval warfare and U-boat warfare, and this is based on the fact that I have agreed with Dr. Kranzbuehler that Dr. Kranzbuehler will treat the entire complex of naval warfare and U-boat warfare; although on this thing also as to Admiral Doenitz as supreme commander of the Navy, and Gross admiral Raeder, so far as they are concerned, Dr. Kranzbuehler, therefore, will take care of that interest, of the Grossadmiral and the Admiral, concerning this complex.

I should like to point out that very important applications of Dr. Kranzbuehler concerning the question as to Admiral Nimitz, do not only concern Grossadmiral Doenitz but in particular Grossadmiral Raeder, and, furthermore, the organization of the general staff inasmuch as the Navy is concerned.

May I speak about the documents now?

SIR DAVID MAXWELL-FYFE: In regard to document No.1 on the war diaries of Seekriegsleitung, and the B.D.U., Dr. Kranzbuehler's assistant, Dr. Meckel, has gone to London to work on these at the Admiralty.

With regard to No.2, Weyer's Navy Diaries, and the Article "Navy Year Book", there is no objection to Dr. Siemers having these. We are indicating in the ordinary way what best he need to use.

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With regard to General Marshall's Report of 10 Octbber 1945, I am convinced that I cannot see the relevancy of it at the moment, but if he will indicate which part he intends to use, it can be discussed when he actually represents it to the Tribunal.

Now the 4th, the British Admiralty documents, May 1939 to April 1940, which are wanted as to the preparations for landing in Scandinavia and Finland, although strictly what is relevant is what was known to the defendant Raeder, then, I shall make inquiries about these documents, and if the Tribunal will give me a short time I hope to be able to report to the Tribunal upon them.

I want to make it clear that I cannot, of course, undertake to give details on Allied documents, but I hope to be able to consider the position and produce some documents which may be helpful to the Tribunal, and deal with them authoritatively. I would rather not be pressed with details at the moment.

DR. SIEMERS: I agree with Sir David, and I hope that I will receive the books to No.2 -- No.2 and No.3 soon, because otherwise a delay may be caused. The report of General Marshall of 10 October 1945, as much as I could see their excerpts so far is important, because General Marshall on various points has expressed different attitude than Justice Jackson. I believe that by confronting the Tribunal, and coming into here with a report of this kind, it would be very important in order to hear the reports by General Marshall.

Concerning No.4, I think Sir David and I am expecting final decision of the prosecution.

I have only one more thing to ask, and I ask to excuse me, that by error I have not listed this figure 5, which is the following: The prosecution has brought quotations frequently here from the book "Main Kampf" by Adolf Hitler, and that through their positions, each one of the defendants, all of whom were in a leading position in 1933, at or before 1933, had had to know before 1933 the basis of this book that Hitler intended to prepare and wage a wretched war. I have found that the quotations in that document book, which was presented in November, are all based on the

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edition of this book which appeared in 1933. The edition of 1933, however, in many points is different from the original edition. I regret that I am only in possession of the edition which was published after 1933. In order to check these questions, that is to say, in order to see what anybody could have read out of this book, let's say in 1928, and not 1933, I ask the Prosecution to try to get a copy of this book in the first edition, and to submit it. As much as I know about it, the first edition appeared in 1925, and the second in 1927, by the publishing firm of Franz Eher.

SIR DAVID MAXWELL-FYFE: We shall try to get the earlier edition so that Dr. Siemers can compare with the other edition.

THE PRESIDENT: Are you going to deal with page 2 of this document? Sir David, you have not dealt with this, have you?

SIR DAVID MAXWELL-FYFE: No. I take it, your Lordship, that the record did not mention there what Dr. Siemers would, in due course, indicate as to the excerpts he was going to use, and it is then we should discuss when he presents them whether any objection which the Prosecution may make.

THE PRESIDENT: Yes. You intend, Dr. Siemers, I suppose to indicate the passages upon which you rely in your document book?

DR. SIEMERS: Yes.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: And that is question of tonnages built, and so on. I said I am making inquiries with regard to that.

THE PRESIDENT: Yes. My attention is drawn, Sir David, to paragraph 4B on page 2. Are you agreed to , or are you suggesting the Tribunal can supply him with the document on the German policy without any further reservation?

SIR DAVID MAXWELL-FYFE: I am very sorry. It was an oversight. I take it that that was included already in the words at the top of the page; in addition I shall submit the documents and affidavits, and some of them are already in my possession, and some of them I shall procure myself without having the assistance of the Prosecution, I take it that Dr. Siemers had such documents on the German policy, and will indicate what basis he is going to use them. I am very sorry I did not refer to that.

THE PRESIDENT: Very well.

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THE PRESIDENT: Does this part of the application mean that, with reference to all these documents, Dr. Siemers has them and doesn't wish any further action to be taken with reference to them?

SIR DAVID MAXWELL-FYFE: Yes, sir.

THE PRESIDENT: You have got them all?

DR. SIEMERS: Yes, sir.

THE PRESIDENT: I call on Counsel for the Defendant von Schirach.

SIR DAVID MAXWELL-FYFE: Dr. Sauter suggests it would be convenient if I indicate the view of the Prosecution.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: May I ask the Tribunal to note that Dr. Sauter is asking for witnesses 1 to 8, except witness 5, as oral witnesses; that is, he is asking for 7 oral witnesses, and Nos. 5 and 9 to 13 by way of affidavit.

The Prosecution suggests that, as far as oral witnesses are concerned, the Defendant might have No.1 or No.2, that is, Wieshofer of Hoepken, because these witnesses appear to cover the same ground; that he might have No.3, the witness Lauterbacher, who was chief of staff of the Reichsjugendfuehrung; and, also, that hemight have No.8, that is, Professor Heinrich Hoffmann, his father-in-law, and the note of whose evidence takes up nine pages of the application, so he is obviously a very important witness.

Then the Prosecution suggests that there might be affidavits from No.5, Scharizer, who was the deputy gauleiter of Vienna: No. 11, who is Madame Vasseau; and No.12, Herr Schneeberger; and No.13, Field Marshal von Blomberg.

The witnesses that the Prosecution find difficulty in perceiving the necessity for are, first of all, No.5, Frau Hoepken. There are no details given in this application, except that she was secretary to von Schirach; and No.6, the witness Heinz Schmidt, who apparently repeats part of the evidence of the witness Lauterbacher word for word; No.7, Dr. Schluender, who also repeats the witness Lauterbacher word for word; and No.9, Dr. Klingspor, who passes a personal view on the Defendant, which, in the submission of the Prosecution, is not really helpful evidence; and, finally, Dr. Roesen, No.10,

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who speaks as to an isolated incident of kindness on the part of the Defendant to the family of musician Richard Strauss.

This is the position which the Prosecution take up with regard to the witnesses.

DR. SAUTER (Counsel for Defendant von Schirach): Gentlemen, I also have the case of Baldur von Schirach. My list of proof in this case I have also made as small as possible. To call as witnesses before the Tribunal and to be questioned here I have requested the witnesses, 1, 2, 3, 6, 7 and 8, and I really have to ask to approve these witnesses.

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The difficulty in the case of Schirach concerning matters of proof consists in that two definitely separate conflicts need to be proved; first, the activity of the Defendant von Schirach as Reich Youth Leader, and, second, for the time from 1940 until 1945, for his activity in Vienna, in whichhe still had a certain function in youth leadership in addition to his main activity. Therefore, I need witnesses as well for the one as for the other activity of the Defendant von Schirach.

In addition to this difficulty there is another one. The Defendant von Schirach was Reich Youth Leader, and that brought with it that practically without exception all his collaborators were relatively young people who, during the second world war, were for long times in the Army. Therefore, it is possible that for several years during the world war one witness might know nothing, because he did not work in the staff of the Defendant von Schirach during that time, and that, therefore, for that length of time another collaborator of Schirach would have to be questioned in order to provide information about his activity.

At an earlier date, I have already in written applications requested further witnesses, but in this application I have omitted these further witnesses right from the start, in order to contribute to speed up the procedure as much as I can. But these six witnesses, whom I have asked to be called before the Tribunal, I really ask to have them approved, because I cannot forego any one of them, in order to get a clear picture about the activity of the Defendant. I may also point out that everyone of these six witnesses whom I have listed under the numbers which I have mentioned before, have already been approved by the Tribunal, so that a repeated approval would just be repetition of the former decision by the Tribunal.

The witness Wieshofer, who is listed under No. 1, was from 1940 till 1945 the adjutant of the Defendant von Schirach; that is to say, during the time in which, as we know, the Defendant was gauleiter in Vienna and Reich Governor.

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This collaborator, who met the defendant Schirach daily and who knew him very well, although he could give information about other things, I have called him particularly to prove that Schirach, as Gauleiter in Vienna followed an entirely different policy than his predecessor, the former Gauleiter Buerckel; that contrary to Buerckel, he tried to establish a correct relationship to the Catholic Church and that in particular, in this sense, he also instructed his collaborators and subordinates successfully. I say successfully because these efforts by the defendant von Schirach to pacify the relationship to the Catholic Church has repeatedly been acknowledged by the Church as well as by the Catholic population of Vienna.

The witness Wieshofer shall also affirm that the defendant von Schirach had nothing to do with the deportation of Jews from Vienna; that this thing about the Jews was --

THE PRESIDENT: Do not numbers one and two, Wieshofer and Hoepken, really deal substantially with the same subject? Wouldn't it be sufficient if one were called as a witness and if the other one gave evidence by interrogatory?

DR. SAUTER: I do not believe quite so, Mr. President, because the witness Hoepken, who is listed under number two, and who from 1938 was already a collaborator of the defendant von Schirach, especially with regard to the Reich Youth Leadership, and this witness could give information especially about the activity of the defendant von Schirach as Reich Youth Leader and in particular about his efforts to get in contact with the youth of other nations, that is for instance England and France, to come to an understanding and to friendship.

I believe, gentlemen, with regard to the special importance of these witnesses and with regard to the list which the defendant von Schirach displays in naming witnesses, one should acknowledge that both witnesses, one and two, not by way of choice, but both of them should be granted. The addresses of both witnesses have been submitted to the Tribunal. They are in a camp and I believe, gentlemen, that in order to get a picture of everything, of the entire facts, it is necessary to call both.

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THE PRESIDENT: I still do not follow what the essential difference is between the two.

DR. SAUTER: Mr. President, I have just pointed out that the witness Hoepken, number two, had a leading position in the Reich Youth Leadership also and that therefore the witness Hoepken, number two, would be in a position to give information officially about the activity of the defendant von Schirach as Reich Youth Leader.

THE PRESIDENT: But Dr. Sauter, you stated that Wieshofer, number one, was adjutant to Schirach in his capacity as Reich Leader of Education of Youth so that he was in just as close contact with the defendant on the question of the education of youth as Hoepken.

DR. SAUTER: Yes, but Hoepken, in his main function, was concerned with education of youth, while the activity of the defendant Wieshofer was limited mainly to the job of adjutant of the defendant von Schirach and mainly in his capacity as Gauleiter in Vienna. That is the main difference.

Those witnesses who could provide information about his activity in Vienna, those are mainly the witness Wieshofer and in a minor way also Hoepken. But I need Hoepken, Mr. President, as I said for the clarification of the activity of Schirach in the Reich Youth Leadership.

Mr. President, may I also point out for the defendant von Schirach, everything depends on this and from the point of view of the Court it should really not make much difference, and whichis so important to Schirach, whether one witness would be called or two.

Gentlemen of the Tribunal, for this point I could have suggested four witnesses in the hope that then I would get approval for two. If now, in the name of the defendant von Schirach, I am only asking for two witnesses right from the outset, I would not think it very just if you would grant only one of these two.

THE PRESIDENT: The Tribunal will consider what you have said.

DR. SAUTER: Furthermore, in the third place, I have the witness Hartmann-Lauterbacher. I have asked to call him and if I understood correctly, the Prosecution agrees. Therefore, I can be very brief.

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The witness Lauterbacher, who was Chief of Staff of the Reich Youth Leadership, is expected especially to supply information about the fact that the defendant von Schirach has in no way prepared the youth psychologically or pedagogically for an aggressive war. And furthermore, that the statement by the Russian Prosecution, which was made in one of the sessions during February -- I believe on the 9th of February, 1946 -- the allegations which were taken from a Polish report, were definitely false, that is, the Hitler Youth had used spies and agents in Poland, instructed them, trained them as parachutists and such, that all that is false and the witness Lauterbacher will prove that.

THE PRESIDENT: Dr. Sauter, Sir David said he would not object to numbe three being called as a witness but what he did object to was six and seven, whom you are also asking for as oral witnesses, because he said they repeated what Lauterbacher said -- number six and seven, that is Schmidt and Schluender.

DR. SAUTER: Yes, sir. Mr. President, here there is also a difficulty. There are the difficulties which I pointed out before.

From the report which was read by the Soviet Prosecution on the 9th of February, 1946, which was a report by the Polish Government, it cannot be seen during what time these things concerning the agents and spies of the Hitler Youth happened or should have happened.

Now it can happen if I call only the one witness, that then it would be alleged that it happened during another time, perhaps during the time when this witness was in the army. That is the reason why, in the interest of the complete clarification of these conditions, I have asked also to call the witness number six, that is to say the witness Schmidt, here befor the Tribunal.

THE PRESIDENT: Well, if you say that, does it not appear that with reference to Schluender, his collaboration with the defendant extended from

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1933 to 1945 and therefore if he were called or were to give an affidavit or an interrogatory, and Lauterbacher, who extends from 1933 to 1940, you would cover the whole period and you could exclude Schmidt.

DR. SAUTER: If I understand you correctly, Mr. President, you are referring to an interrogatory in the case of Lauterbacher.

THE PRESIDENT: No, Lauterbacher, Sir David was prepared to have called a a witness.

DR. SAUTER: Lauterbacher as a witness and Schmidt an interrogatory?

THE PRESIDENT: That Schmidt and Schluender were cumulative. You said they did not relate to the same period, as I understood you, and that might raise a difficulty. So I pointed out to you that number seven relates to the whole period, that is to say from 1933, beyond the period dealt with by Lauterbacher, and goes to 1945 and therefore, if he were called, that would cover the whole period and if you called Lauterbacher and Schluender and left out Schmidt --

DR. SAUTER: So that from Schmidt I would get an interrogatory? Yes, I would agree to that.

THE PRESIDENT: And the statements which you make with reference to Schmidt and to Schluender are practically identical.

DR. SAUTER: Yes, only they refer to different times as each of the two was in the army. If one of them comes he cannot say anything about the time during which he served in the army, for instance, he cannot give any information as to whether during his time in the army agents would have been used.

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THE PRESIDENT: But you have stated that there were collaborators with the defendant from 1938 to 1945 in the one case and from 1933 to 1945 in the other case, and therefore if that is correct they can't have been in the Army, they can't have taken an active part in the army.

SIR DAVID MAXWELL-FYFE: I should be quite prepared to agree to the suggestion that your Lordship put forward; that would then cover the whole period. If both Lauterbacher and Schluender were called it would dispense with the necessity for Schmidt.

DR. SAUTER: May I also point out that in the case of Schluender, who has been arrested a few weeks ago, that I need Schluender in any case because he was a specialist with the Reich youth leadership for physical training, and therefore I expect especially through Dr. Schluender to prove that the education of the youth, such as defendant von Schirach was in charge of, was definitely nothing extraordinary nor militaristic. The defendant von Schirach, during the entire trial so far, has always --

THE PRESIDENT: I think, really, there is a substantial agreement between you and Sir David that one and three certainly should be called and that seven might be called, but I don't know whether Sir David agrees whether an affidavit or interrogatories might be given by six.

SIR DAVID MAXWELL-FYFE: I have no objection to that, My Lord.

THE PRESIDENT: That is substantially what you want, Doctor?

DR. SAUTER: Yes, sir.

THE PRESIDENT: Very well; let us go on then.

DR. SAUTER: Yes. Then under number four I have mentioned an affidavit by a witness Maria Hoepken. Concerning this affidavit which is already in my possession, I will submit this to the Tribunal and to the prosecution at the same time when I submit my book of documents.

Then I have also an affidavit, if I may mention that now, in my possession from two witnesses: number nine, Dr. Klingspor, and number ten, Dr. Rosen, and here the same thing applies,--the Tribunal and the prosecution will receive these affidavits together with my document book.

Concerning number eight, the witness Hoffmann, the prosecution, since this witness is here in Nurnberg, agree to having him called as a witness, therefore I believe that I do not have to make any detailed statements con-

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cerning this witness.

The same applies to number twelve and number thirteen, both witnesses. Gauobmann Schneeberger fom Vienna, will mainly inform us about the relations, the attituda, of the defendant concerning the question of foreign workers during the time of his activity as gauleiter in Vienna. And number thirteen, Field Marshal von Blomberg, shall inform us about the attitude of the defendant von Schirach to the question of the pre-military education of the youth, to the question of physican training, and the question of patriotic education of youth by the defendant von Schirach. The prosecution agrees that these witnesses should be questioned by way of interrogatories, which I have also suggested myself.

Now, I come to the one figure on my list which is very important to my client and myself, that is number 11, the application to examine a French woman by the name of Ida Vasseau. From this witness, Ida Vasseau, we have heard of her in court for the first time when the Soviet prosecution submitted a report from a commission about the atrocities of the Fascist-German invaders in the area of Lemberg; Document USSR No. 6.

In this document we can find a sentence which says that a French woman, Ida Vasseau, who was active in a children's home in Nurnberg, had reported that the Hitler yough had committed particularly atrocities in Nurnberg. It was alleged that from the ghetto small children had been sold; however, it was not told by whom and to whom these children were allegedly sold; and particularly, it is supposed to have been the Hitler Youth who used these small children as targets.

Gentlemen, I am sure we can see that such events represent quite a particular atrocity, and I can tell you that of the entire prosecution, the presentations of the prosecution during the last three months, nothing has depressed the defendant Schirach more than this assertion. The defendant Schirach has always, also in his interrogation, has had the opinion and views that so far as the education and training of the German Youth are concerned, which was under his guidance, he will take full responsibility; and that he is also prepared here, as defendant, to explain to the Tribunal which were the principles which guided him, which aim he had, and which were the measures

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of success which he had. He has never--

THE PRESIDENT: Dr. Sauter, you are only applying for witnesses, aren't you now? You see, you agree in your application to an affidavit --

DR. SAUTER: I did not understand, Mr. President.

THE PRESIDENT: What I was pointing out to you was that this is only an application with reference to witnesses, and in your application you say that however, in consideration of the far distance of thewitness from Nurnberg, I agree at first that an affidavit should be drawn up.

DR. SAUTER: Yes.

THE PRESIDENT: That an affidavit should be drawn up; so you are in agreement and I don't understand why we should be troubled with further application.

DR. SAUTER: Mr. President, to my application I have added something. I have written that a personal appearance of this witness before the Tribunal would be essential so that she could be questioned, because this information is important in order to judge the Hitler Youth as a whole.

THE PRESIDENT: You have reserved that right after the application having been sworn. Well, you can prepare the affidavit and then send it out to the witness and then you can see whether you want the witness for cross examination, and Sir David agrees to that course.

DR. SAUTER: Mr. President, for my client only one thing was important. That among eight million members just one such atrocious case of cruelty happened, and about such things he has never heard anything in his position, and I agree that an affidavit could be used; but only for this case I would like to reserve the calling of witness eventually if that affidavit should not be sufficient.

THE PRESIDENT: That deals with the witnesses, and we'd better adjourn.

(A recess was taken until 1400 hours).

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Official transcript of the International Military Tribunal in the matter of: The United States of America, the French Republic, The United Kingdom of Great Britian and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany, on 6 March 1946, 14-5-1700, Lord Justice Lawrence presiding.

SIR DAVID MAXWELL*FYFE: May it please the Tribunal, with regard to the documents for which Dr. Sauter asked, the Prosecution take the usual line that there is no general objection to extracts being used, but at this stage they reserve their right to challenge admissibility of the extracts on the grounds of relevance.

They will have to look particularly closely at No. 9, the book entitled "Look, the Heart of Europe", and the commentary on it by the late Lloyd George but they can see that these are particularly matters which can be more conveniently dealt with when they have seen the document book and the extracts are before them.

DR. SAUTER (Counsel for the defendant Schirach): Mr. President, I can state my position regarding the documents very briefly. In the main, it is a question of books, addresses, and essays, by the defendant von Schirach. I have these literary works in my possession and I shall submit them to the Prosecution along with my document book. In the document book I shall then outline the individual extracts from these books. I shall submit them to the Prosecution and to the Tribunal so that both of them can refer to the individual excerpts.

I believe that is all I have to say on that subject.

DR. SEIDL: (Counsel for the defendant Hess): Mr. President, My Lord Justices, on the 20th of February I made an application for additional materi for the defendant Hess. I would be obliged to the Tribunal if the Tribunal would inform me whether it would like to hear the argument in regard to this application now or later, since I do not yet know whether the Court has a translation of my application in its hands.

THE PRESIDENT: The Tribunal has not seen the application yet, so I thin you had better postpone making the argument until the Tribunal has seen the application

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DR. SEIDL: Very well, Mr. President.

DR. SERVATIUS (Counsel for the defendant Sauckel): For the defendant Sauckel I have suggested a number of witnesses and in my preliminary remarks to the list I have divided them into various groups.

The special characteristics of this evidence are to be seen by the fact that smaller relationships must be clarified in this case. The Prosecution, in its case against Sauckel, limited itself to general considerations that would inculpate him, and it also did not work out in detail the complicated matters of SS camps and matters that were carried out in the scope of the Arbeitseinsatz and so on.

Sauckel's entire activity has not been clarified, or has been clarified but slightly. I am consequently obliged to present his work staff, his collaborators, and dossiers of their activity. It looks at first as if my list of witnesses were cumulative, but more previse examination of it shows that they represent different fields. Some of them were experts in the East; some, experts in the West or in theSouth. Then, there is the creation of the Arbeitseinsatz and the care and housing in the places of work that were occupied by the various groups. Another group is the recruiting of the worker in foreign countries, on which also witnesses must be heard.

The basic question regarding Sauckel is the question of the Arbeitseinsatz. The question of the conspiracy is of secondary importance. I believe I can rely in large measure on what is presented by the other defense counsel in their various cases.

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SIR DAVID MAXWELL-FYFE: May it please the Tribunal, the prosecution has endeavored to follow Dr. Servatius in considering the suggested witnesses under various heads.

The first witness, Ambassador Abetz, falls into a class by himself. The defendant's counsel wishes to call this witness on the question of agreements between him and Laval. The prosecution submit that that cannot affect the position over, certainly, occupied France, and they suggest that this witness is really irrelevant to the main charges which have been made against this defendant. They are, however, willing--my French colleagues will, if Dr. Servatius desires it, let him know the effect of an interrogation of Ambassador Abetz with regard to this subject. I don't want to comment on it at the moment, because it is obviously a matter which Dr. Servatius should consider before any comment is made in Court. However, if he will allow me to say so, I think it would be useful if he considered that point before any decision was come to.

Then, the next group are the witnesses 2 to 8. They all come from the Reich Ministry of Labor, and they are called to speak generally as to the defendant's attitude, the limitations on him as regards recruiting, and his personal dealings with offenders. The prosecution suggest that it will be reasonable for Dr. Servatius to select the two best out of the eight for oral testimony, and two more to give affidavits.

The next three, numbers 9, 10, and 11, were members of the defendant Sauckel's staff, who are sought to be called to give evidence as to his efforts for good conditions. Again, the prosecution suggest a selection, and put forward one witness and one affidavit.

Number 12, the witness Hoffman, is called for the purpose of saying that the DAF, the Deutsche Arbeiter Front, looked after the welfare of foreign workers by agreement with the late Dr. Ley. The prosecution submit that that witness would be cumulative, and object to him, as that subject is already covered.

Then there are a series of witnesses, numbers 13 to 18, who deal with the relations and liaison between the defendant Sauckel and the DAF. These are substantially still on the same point, and the prosecution

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suggest that one witness and one affidavit out of that group would be sufficient.

The next witness, number 19, Karl Goetz, bank director, deals with the question of wages, and also of the transmission of money to their homes by foreign workers. The prosecution suggest that that is the sort of material which might conveniently be dealt with by an affidavit or an interrogatory, according to Dr. Servatius' wishes.

Number 20, Beckurtz, deals with the special conditions of foreign workers at Gustloff. That subject has been thoroughly covered in general by previous witnesses, and the prosecution suggest that this particular witness is cumulative.

With regard to Franz Seldte, from the Reich Ministry for Labor, he deals with the division of authority between Sauckel and Ley, and that Sauckel had nothing to do with labor from concentration camps. Again, the prosecution suggest that an affidavit would show how far the witness Seldte is speaking merely of routine matters, such as orders and the like, and how far he is dealing with individual or personal matters. If he does in fact deal with individual and personal matters and interviews, then I suggest that Dr. Servatius could resume application on that point.

The witness Darre, who was the former Reich Minister for Food and Agriculture, is sought in order to speak as to the defendant's efforts to get higher food rations for foreign workers, especially in eastern areas. The prosecution suggest that this witness also is cumulative, and they will indicate a number of other witnesses and documents which deal with this point.

As to number 23, Reinecke, there is no objection.

Number 24, Colonel Frantz, is sought for to say that French prisoners of war were exchanged against voluntary workers. The prosecution object on the ground of irrelevance.

As to number 25, there is no objection to Dr. Lammers, who is being called by, I think, every defendant, or practically every defendant.

The next, 26, the witness Peukert, again deals with the administrative position and apparatus of Sauckel, which has already been treated by witnesses at considerable length, and the prosecution object to this as cumulative.

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Number 27, Governor Fischer, Chief of Labor in the Government General, is called to say that Sauckel had made dealings with the SS in regard to resettlement. Again, if he is speaking as to rules and orders that were laid down, we suggest an affidavit.

As I understand it, the next witness, Dr. Wilhelm Jaeger, is asked for for cross examination on his affidavit. That is United States Document 202, and the references in the transcript are 1322 to 1327 and 3057. No request was made at the time, and I leave it to Dr. Servatius to explain his position before dealing with this point.

The next two, Dr. Voss and Dr. Scharman, deal with the public health aspect of foreign workers. They deal with different districts. The prosecution submit that that question could be dealt with by one affidavit.

The next three witnesses, 31, 32, and 33--I think the position is that Dr. Servatius wants one of the three to dispute certain evidence given by M. Dubost on the 28th of January that the defendant authorized the evacuation of Buchenwald. I have looked at pages 3466 to 3492 of the transcript, but I cannot find the evidence which Dr. Servatius has in mind, and perhaps he would be good enough to indicate it to the Tribunal.

With regard to 34, Skorzeny, who is called to prove that the defendant, as Gauleiter, had nothing to do with concentration camps, we make no objection.

With regard to Schwarz, to prove that the chart of the Party produced before the Tribunal was incorrect in one respect, we suggest that that be allowed.

With regard to Frau Sauckel, whom it is desired to speak as to the defendant's charitable disposition irrespective of the Party, the prosecution suggest that that is irrelevant to the issues before the Tribunal.

I think it is impossible in this case, My Lord, to leave the witnesses without asking the Tribunal to take a glance at the documents, because the two are interrelated.

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There is an application for 97 sets of documents and in general they set out what we should call in England "allthe relevant statutory rules and orders," that is, the subsidiary legislation made with regard to the activities of this Defendant. And frankly, I must own to the Tribunal that I have not had the opportunity of reading the original orders. I have only read the summary which Dr. Servatius has been good enough to provide in his application. But quite clearly, these documents cover again in the greatest detail the various problems with which the respective sets of witnesses to be called, deal, and in the submission of the Prosecution, they provide a good reason and a fair ground for some considerable limitation of the oral witnesses.

There are certain of the documents to which my colleagues and myself take considerable objection, and I might just state two or three of these.

No. 45 deals with the Reich law for sanitary meat inspection, and if the Tribunal will turn over, after No. 49, -- they will see a note -- Document 45 is presented to prove especially that the German civilian population also received meat graded as inferior, which therefore could not be considered inedible meat. If one has not the compariosn of the calcric and other properties of the meat, it is going to be extremely difficult to get any value from the evidence, if one is going into that. It is terribly and unreasonably detailed for the inquiries before the Tribunal.

And if the Tribunal would then turn to 80 and 81, Dr. Servatius wishes to prove certain Soviet orders, and apparently for the purpose of showing thatthe Soviet methods of mobilization were contrary to the Hague convention and are therefore evidence that the Hague Convention had become obsolete. I submit that the two small examples of the evidence indicate that there would have to be extensive examination of the facts surrounding them and could not be the basis of a sound argument that a convention had been abrogated. It is possible that in rare cases international agreements may be abrogated by conquest -- not impossible -- although it is a very rare thing to happen. But evidence of that kind would in my respectful submission not be the basis of such an argument.

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Then Nos. 90 and 91, which are files of affidavits. There again it is very difficult, without serious and prolonged consideration of the circumstances under which that affidavit was made, to assess the values of bundles of affidavits of that kind.

No. 92 is a film of foreign workers, and I would suggest that it would be reasonable if the representatives of the Prosecution were shown that film first, before it is shown in Court. I think that was the course that was taken with regard to the concentration camp film. Because, of course, without going into argument at the moment, the question of propaganda is a serious one which the Prosecution are bound to consider. I have expressly refrained from further comment, but I think the Tribunal will see the point that is in my mind, and -- I hope -- consider that it is reasonable that we should see the film before we are asked to comment on it further.

I have taken only certain examples in the documents because obviously they will have to be considered in detail when we see the text, and the Prosecution would have to reserve their rights as to objection. But I make the general point -- and I hope the Tribunal will think that is is a fair point, -- and I hope Dr. Servatius will not think that I am decrying his work, I am only emphasizing the industry and care he has shown in doing it -- that with this immense body of careful documentation the witnesses in this case will take careful pruning. And that, as I have said, indicates our general view.

(Dr. Servatius came to the lectern).

THE PRESIDENT: Before you deal with what Sir David said, Dr. Servatius, I ought to say for the information of other Defendant's Counsel and for other persons concerned, that the Tribunal proposed to adjourn today at 4 o'clock instead of 5 o'clock.

And, Sir David, I wanted to ask you: Throughout the discussion I think you referred to affidavits. Did you mean to particularize an affidavit as opposed to an interrogatory?

SIR DAVID MAXWELL-FYFE: No, My Lord. I did not. I am sorry. I really haven't made that distinction. It is written evidence that I wish to refer to, either by affidavit or interrogatory, whichever Dr. Servatius wishes to have.

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THE PRESIDENT: And one other question: In view of what you have said about the documents, wouldn't it be good thing for the Prosecution to have a little more time to consider the documents? And then perhaps they could give more help as to their view about the documents.

SIR DAVID MAXWELL-FYFE: That would be so, My Lord, but Your Lordship willappreciate that wehave had a considerable pressure in the lastfew weeks and it is impossible to cover them all, but we should be glad of a little time to go into the documents.

THE PRESIDENT: Perhaps you could see Dr. Servatius about them after the adjournment some time.

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: And in the course of a day or two, let us know.

SIR DAVID MAXWELL-FYFE: Yes, we could do that.

THE PRESIDENT: Now, Dr. Servatius, will you deal with the witnesses, then?

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DR. SERVATIUS: Witness Number One, Ambassador Abetz. I name this witness for a subjective understanding of Sauckel regarding the reliability Arbeitseinsatz from the point of view of international law. One could assume, if no contradiction is made by the governments of various countries, that he was permissible. I am, however, agreeable if the witness Stothfang is admitted who was deputy of Sauckel and repeatedly had negotiations with Laval. If he is admitted, I would renounce the witness, Abetz. I would forego Witness Number One if I am permitted Witness Number Nine.

THE PRESIDENT: Yes, I see. That is Two to Eight.

DR. SERVATIUS: Witnesses on the staff. I have great difficulty in foregoing any witness. The practical execution of the orders that were given must be emphasized plasticly through a witness. The Tribunal cannot read through this enormous number of laws except with great difficulty, and it is easier to hear witnesses on the basic problem than to listen to the reading of the laws. The witness Timm is a most important witness. He led the so-called Europa-Amt and had charge of the division of the various labor forces.

THE PRESIDENT: One moment, Dr. Servatius. First of all, you will, no doubt, be calling the defendant Sauckel himself?

DR. SERVATIUS: Yes, I shall call him toward the conclusion.

THE PRESIDENT: These witnesses will be corroborating his evidence about his administration. Under those circumstances, would not two of them, as Sir David suggested, out of eight and two more affidavits be sufficient?

DR. SERVATIUS: The witness Beisiegel will be on the subject of legislation, but the other witnesses are necessary because they can testify regarding the use of labor in the East except one. This witness must, consequently, be able to say what the practical usages were. The laws are simply dead things if we do not know how they were applied. The witness Letsch can testify regarding the East. The witness Hildebrandt is for the West and can testify how in France gradually the relationship developed.

The witness Kaestner has not been found, and I will forego him.

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The witness Dr. Geissler is of vast importance because he was in charge of inspections. The great question is, if those workers were employed in Germany, how did Sauckel concern himself that his regulations were actually put into practice. There were a whole series of inspections. Number Seven was the leader of the inspections and was introduced into the government by Sauckel. I do not believe that we can do without him.

THE PRESIDENT: Why are not Number Three and Number Eight cumulative?

DR. SERVATIUS: I named Number Eight because the question of wages seemed particularly emphasized. So far the Prosecution has not become specifi in individual points. I can conduct my case on specific points only if I lay most emphasis on the question of wages. It is only Witness Number Eight who can testify to this question. Witness Number Three can make general statements regarding the general regulations and specifically that Sauckel made efforts to improve conditions and to the very conclusion, through laws, improved these conditions continually. These facts are clear from the regulations on which Witness Number Three will testify.

Witness Number Nine, Dr. Stothfang, was Sauckel's plenipotentiary, a personal expert of Sauckel, and was in many negotiations, particularly in France. Therefore, I have named him as a substitute for Number One, and then because of the limitations of the so-called Weisungsrecht, Sauckel's right to emplcy workers, it was to be seen at the very beginning of Sauckel's activity that no one who carried out any of Sauckel's orders could tolerate such behavior. Witness Stothfang is to testify on thatsubject.

THE PRESIDENT: Why are Nine and Ten cumulative?

DR. SERVATIUS: I will forego Number Ten. I might say something in a slightly different field.

THE PRESIDENT: Yes.

DR. SERVATIUS: Witness Number Eleven was the press expert. If I must forego any witness, I would forego him most willingly. He knows exactly what the conditions were, wrote the book "Europe works in Germany" and can state that these pictures were not posed but were ordinary unposed photographs, which is important for a complete understanding of the book.

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The next witnesses belong to the Work Front, the Arbeitsfront. The Arbeitsfront was in charge of all the foreign workers, just as it was in charge of German workers. That situation persisted, and the witness can testify as to the individual carrying out of various

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orders, the conditions of the camps, the clothing and the housing, everything that was done. Witness Number Thirteen would be the most important in this particular, but he has not been found. Thefefore, I lay particular value on Witness Number Fourteen, who was his collaborator.

The Witness Hoffmann was practically in charge and knows what conditions were in the camps.

Those were the witnesses who worked in collaboration with Sauckel on the Arbeitsfront. The practical work done by the Arbeitsfront is to be testified to by the other witnesses.

The situation is this: Dr. Ley, who is no longer represented here as a defendant -- the whole field of work of Ley is now incorporated into Sauckel's field, and he is now being additionally accused of things of which Ley is guilty unless this question is clarified.

THE PRESIDENT: What is the difference between Fifteen and Sixteen?

DR. SERVATIUS: Fifteen is a mistake. It is identical -- a mistake on the part of the stenographer. Fifteen is identical with Witness Twelve.

Witness Sixteen, Hende, is particularly important to me because he was in charge of the organization of the Arbeitsfront.

THE PRESIDENT: You mean Fifteen comes out, does he?

DR. SERVATIUS: Yes, Fifteen comes out.

THE PRESIDENT: Yes.

DR. SERVATIUS: Witness Seventeen, Dr. Hupfauer, knows how the laws originated in a general way, and knows of Sauckel's tendencies.

THE PRESIDENT: Why is not he cumulative of Number Fourteen, whom you desire instead of Thirteen? Both of them are relative against the charge of inhumanity, and Dr. Hupfauer is perfectly general.

DR. SERVATIUS: Witness Fourteen will treat of the practical side, and the Witness Seventeen will treat of the laws, the legislation.

THE PRESIDENT: There is nothing about that -- Yes, there is.

DR. SERVATIUS: Witness Eighteen was in charge of the practical execution on the Arbeitsfront. One must keep these various fields separate. Sauckel had a small office. It was transplanted to the Work Ministry. He made the regulations with the aim of steady improvement, and the other side, of course,

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is the practical execution that took place through the Arbeitsfront, or the recruiting in foreign countries.

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The next witnesses are from the special staff of Sauckel. Witness 19, Goetz, Bank Director, who can testify that millions of wages were transferred to foreign countries for the workers.

Witness 20, Beckurtz, was Director of the Gustav Plant and in the circle closest to Sauckel. He will testify that previsely in the Gustav Plant the treatment of workers was exemplary.

Witness 21 shall testify about the distribution of authority between Dr. Ley and Dr. Sauckel. It is of great importance whether Sauckel was personally responsible or whether some other office was practically in charge.

THE PRESIDENT: Why cannot we give him an affidavit or interrogatories?

DR. SERVATIUS: I should be satisfied here with an affidavit. I have not yet spoken to the witness personally and that is the reason I had to list him as a witness.

Witness 22, Reich Minister for Food and Agriculture. He shall testify that Sauckel immediately after taking over made efforts to improve the conditions of the foreign workers and was particularly active in this field. This witness will testify as to the reputation of the charge that the workers were ill treated. I shall here be able to prove that the foreign workers were in part -- I say in part -- better treated than German workers.

Witness 23--

THE PRESIDENT: He has already been granted to another defendant.

DR SERVATIUS: Oh, I see. Then I can forego him.

The next witness has not yet been found. He will testify regarding the exchange of war prisoners, particularly with France. Reich Minister Lammers has already been approved for other defendants.

Witnesses 26 and 27 are important because they can provide information on the way in which workers were recruited in the east area. They can testify what powers Sauckel had, whether they were executive; what powers the police had.

These are all essential things. Witness 26 has not yet been found. Consequently, I shall have to limit myself probably to witness No. 27, Govenor Fischer, who has been found and approved.

THE PRESIDENT: What about an affidavit for 27?

DR. SERVATIUS: I do not believe that I can forego calling him as a wit-

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ness, It is very important here to see the witness; a man who can speak about how these conditions in the east really were.

Witness 28, Dr. Jaeger. Here an exhaustive affidavit has been presented, but which has many lacuna in its exterior form, Document 288. It has been submitted and which I had in the German translation.

THE PRESIDENT: Dr. Servatius, was not it the proper course to cross-examine Dr. Jaeger when his affidavit was read?

DR. SERVATIUS: I did not know at that time the conditions in this field. I got information and, having ascertained that his statements were vastly exaggerated, I have about six sworn affidavits which had sixty camps concerned. There were three or four camps at the time when total war had reached its culmination, a fact which the witness did not mention. I believe I can easily prov that his statements are incorrect. I should like to ask to submit a number of affidavits and could be shown to the witness, if he is called here in person. I made also the further application, which has not yet been acted on, to submit a number of medical reports that were made in this area and which tend to prove that Dr. Jaeger's testimony was incorrect. It is very difficult for me to get possession of this evidence. Consequently, my delay. It is very important to me that Dr. Jaeger appears here as a witness.

The next witnesses, Dr. Voss and Dr. Scharmann. They will speak on the same thing but each for a different area. They visited our camps as doctors and can testify that the conditions there were unobjectionable and good. I could name many such doctors if I had the opportunity to look them up. I know both of these and they will corroborate exactly what the conditions were.

THE PRESIDENT: If that is so, why can they not both give an affidavit of it?

DR. SERVATIUS: They are in a camp. It would be difficult for me to reach them. If the witnesses were brought here, it would be easier if Dr. Voss could appear or at least one of them

The next three witnesses are named for this purpose.

SIR DAVID MAXWELL-FYFE: My Lord, since I gave the explanation, I have had a chance of comparing the English text with the French text, and it would appear that I never had crept into the English text, which says:

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"He seemed to be impressed and he gave an explanation of the gravity of the communication Schichlowski had given. Schichlowski had given an order that no prisoner should remain in Buchenwald". The French text is, if I may translate it:

"He seemed very embarrassed and an explanation was given. The Governor of Thuringia, Sauckel, had given the order that none of the detained persons should remain at Buchenwald."

So that apparently when I told the Tribunal that we could not find this recerence, I was dealing with the English text, and it appears that there was such a reference in the French text. Since M. Dubost was calling the witness, theprobability is that the French text is right, and as there is evidence that Sauckel had given this order, I think it is only fair that I should say that one witness should be permissible to deal with this point in the view of the Prosecution; it is, of course, a matter of the Tribunal.

DR. SERVATIUS: I am agreed with the Prosecutor. I need only one of the three witnesses. If none of the witnesses should be found, then I have in the document book an affidavit of one of Sauckel's

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sons who was also present at the conference.

Witness 34, Skorzeny, shall testify regarding the general connections between the Gauleitung and the concentration camps; to what extent that the Gauleitung knew what went on in the concentration camps on the basis of its official position.

Witness 35, Reich Treasurer Schwarz. This question has been settled. I have received my interrogatory answered.

Witness 36, Mrs. Sauckel, was previously approved by the Tribunal. I can see that there might be certain scruples but, however, the following is important: The witness, among other things, repeatedly heard that the defendant Sauckel is accused of having treated foreign workers too well. That is one point. The other point regarding the conspiracy that Sauckel, alone and also with other Party members, had very little connections but was more or less on his own and, consequently, did not know much about what went on in general policy.

That concludes my remarks to the list of witnesses.

THE PRESIDENT: Dr. Servatius, you probably realize that you have asked for a very much larger number of witnesses than any other counsel and I have, therefore, to ask you whom you regard as the most important witnesses. It may be that it will be necessary to limit the number as you are aware that we are directed to hold an expeditious trial. And so, if you would kindly give me the list of those witnesses whom you regard as the most essential.

DR. SERVATIUS: If I may reflect until tomorrow, I shall attempt to reduce the number. It is difficult because the field is so large. I also did not receive any trial briefs for Sauckel in which the charges are particularized. Consequently, I must regard the matters from all sides. It is a question of wages; it is a question of vacation; it is a question of transportation; it is a question of sickness. There are so many aspects according to which I must take the position.

THE PRESIDENT: You will not forget that many of the defendants are concerned in various aspects and they have not either asked for or

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been allowed this very large number of witnesses.

DR. SERVATIUS: Shall I turn to the documents now?

THE PRESIDENT: Well, I rather thought that perhaps Sir David was going to get in touch with you after the adjournment and perhaps you could then deal with the documents more successfully.

SIR MAXWELL DAVID-FYFE: I think that would be time usefully spent, My Lord, if the Tribunal would allow it.

THE PRESIDENT: Yes.

I call on Dr. Exner on behalf of the defendant Jodl.

SIR MAXWELL DAVID-FYFE: May it please the Tribunal, Dr. Exner and Professor Jahrreiss were good enough to approach the Prosecution on this matter and put forward certain considerations, including the witnesses to whom they attached the greatest importance, and over a considerable part of the field there is no difference between us. On certain matters there is a difference of principle, which I shall point out to the Tribunal in a moment, but the effect is, if I might run through the application, that the Prosecution will not offer any objections to General Winter, who speaks as to the organization of the OKW and the respective duties of the defendants Keitel and Jodl. They will not offer objections to Major Professor Schramm, although the need for the evidence is perhaps not so obvious. On the other hand, with regard to No. 3, the evidence of Major Kipp, that the fettering, chaining of prisoners took place at the Dieppe and the cause of the shooting of the Kommando order, the Prosecution submit that these are irrelevant. With regard to Major Beuchs, Dr. Exner tells me that he will be satisfied with interrogatories. The Prosecution do not object.

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With regard to No. 5, General von Buttlar, Professor Exner suggests that he should be a witness, and the Prosecution do not object.

With regard to No. 6, the Prosecution are content that there should be interrogatories.

With regard to Vice Admiral Buerkner, the Prosecution are prepared to take no objection.

Then with regard to No. 8, General Buhle, a questionnaire has been sent off.

With regard to No. 9, it is suggested that there should be interrogatorie No. 10, interrogatories.

With reference to 21, the Tribunal has allowed an interrogation in each case, and in many cases a questionnnaire has been sent off, and therefore the Prosecution could not object at this stage when action has been taken on the Tribunal's suggestion. That would mean that the defendant Jodl would have four oral witnesses, apart from the interrogatories which have already been largely approved by the Tribunal. The objection of the Prosecution to No. 3 is maintained.

DR. EXNER: I should like, first of all, to speak regarding No. 3, Kipp. The Prosecution has its objections to this witness. We need him to provide information regarding the origin of the Fuehrerbefehl of the 18th of October 1942, that is, the Fuehrerbefehl regarding kommandos. This was a great affliction to Jodl and it is very important to hear exactly how this order came about, the order that airborne troops should be executed.

The objection, so far as I understand it, that the Prosecution has to this witness and to this whole theme of evidence is that it appears as if this would be concerned with the events of Dieppe, which was the reason why this order was issued. But we are not concerned to examine the events of Dieppe or to portray them in all their details. He couldn't do that, because he was in the OKW and was not a witness to those occurrences. We are concerned with something else, to wit, the fact that certain reports were presented to the OKW which led to the issuing of this order.

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When these reports about the events at Dieppe reached the OKW, the Fuehrer became enraged and ordered strict measures to be taken against these commandos. Jodl refused to issue this order or to even draw it up as he was required to do by the Fuehrer. When he was pressed on this matter he said he did not know how he could provide any reason for that order. Because of the particular legal complication of this matter, Jodl submitted this question to Kipp, who is a professor of law and knew something of law, and asked him to give it his careful scrutiny.

Moreover, inthe Wehrmacht Fuehrungstab of Jodl an order was issued. A poll was taken of what opinions were held by the staff on this order. These opinions from the various divisions were different in each case. Since in the meantime ten days had passed, Hitler lost patience and he sat down and drew up the whole letter himself, and in a further order he gave his reasons for this order. In other words, Jodl did not draw up this order. He had scruples regarding it and had tried to prevent its being issued.

This history of how this order of 28 October 1942 came about, which was, as I said, a great affliction to Jodl, is of great significance, and Kipp shall bear witness to that fact.

Further, it was said that as to witness No. 5, Buttlar, there is no objection to him.

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Regarding No. 4, I am agreeable to an affidavit or interrogatories, but I must make the provision that if the interrogatory is unclear then I may still call him as a witness. I hope that can be avoided.

Regarding witness No.7, Buerkner, I should like to point out that he is the same Admiral Buerkner on whom there was debate this morning as a witness in the case of Raeder.

Regarding No. 8, the interrogatory has already been sent out. I specifically reserve the right, if the interrogatory is unsatisfactory, to call him, nevertheless, as a direct witness.

Otherwise I have nothing further to say on that which the Prosecution has made no objection.

I just received a note saying "I had relied on the fact that Buechs would come as a witness." I had not asked for him. This is apparently a note from Goering's counsel. I shall have to ask the Tribunal to make up its mind on this subject. I had not expected to call him personally.

THE PRESIDENT: Which witness were you talking about?

DR. EXNER: Witness No. 4.

THE PRESIDENT: Do you say you are asking for him as an oral witness?

DR. EXNER: Goering is also asking for him as a witness.

THE PRESIDENT: Has he been allowed to the Defendant Goering?

DR. EXNER: He had counted on my calling him as a witness, and then he could at that time put questions to him. He is here in Nurnberg.

Shall I go now to the documents?

THE PRESIDENT: Yes.

DR. EXNER: Points 1 to 4 are not objected to by the Prosecution. I understand this in the sense that in my document book there is an extract that I intend to read. I submit the entire document to the Tribunal without its being necessary to have a translation of the whole document, only that part which I am going to read. If it is a question of a large document and I need only one paragraph of this document, then it is sufficient if I submit this entire original document to the Tribunal and in my document book

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include only this particular paragraph and its translation.

THE PRESIDENT: That is right.

DR. EXNER: Regarding points 5 and 6, the Prosecution object and I withdraw these two documents.

Regarding Document 7, there is a curious thing about it. That is Document 532, submitted by the Prosecution. At that time I raised a protest against it and this document was stricken from the record. Now I myself apply that this document be submitted in evidence. The document is the outline of an order that was submitted to Jodl. Jodl did not approve it, crossed it out, and sent it back without signing it. It was then submitted by the Prosecution and I protested against it, that it should here be submitted as if it were actually an order that Jodl had signed. Jodl did not approve it. I want to bring out that Jodl invalidated this law and did what he could to prevent the passing of an illegal law.

Regarding points 8 to 15, the Prosecution has no objection.

Regarding points 16 and 17 --

SIR DAVID MAXWELL-FYFE: Points 16 and 17 are the subject of objection from the Prosecution. Point 16 relates to the English Close Combat Regulations of the year 1942, and 17 is the English order for the Operation Dieppe of the same year. With regard to the Close Combat Regulations, the only relevance they could seem to have would be to object to this form of training, and in the submission of the Prosecution it would be relevant on the question of the commando order.

With regard to the question of shackling, I think the simplest way of dealing with it is to point that, as my friend Mr. Dodd pointed out, the Prosecution have not introduced that matter into the case, and therefore it would appear that the English order in question was not relevant.

Apart from the general contrary objections, neither of these matters seem connected with points in the case.

I might just indicate No.21, which is another objection. That is on the same basis as the old document, which I think the Tribunal has had

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before, the compilation of the German Foreign Office on breaches of international law, and it is sought for, as the Tribunal will see, as evidence of the reports that were made to the High Command of the Wehrmacht that gave occasion to take reprisal measures.

Then a similar ground of objection applies to No.21, a history of the White Russian Partisan War, which is sought for as evidence that the danger of bandit warfare gave cause for undertaking sweeping counter measures.

These objections can be all grouped together. They fall under the general objections to tu quoque evidence which the Prosecution has maintained throughout the trial.

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DR. EXNER: May I say something regarding this? As far as 16 and 17 are concerned, we simply wanted to have these documents on hand in order to look at them, in order to judge whether or not we want to submit them in evidence. I have stated so at the foot of the page.

As far as their relevance is concerned, we do not assert that these orders contain anything contrary to law, but, for instance, in the order regarding close combat, if English soldiers are instructed to behave in a way with which our soldiers are reproached, then there is a contradiction on hand that is indeed significant. Then apparently the British Government would be standing on the point of view that on their part such actions are permissible, but if they are permissible to the British they are also permissible to us, because there cannot be two standards in these matters. In order to determine this, we wanted to be able to see these battle orders. That is Number 18.

Number 19 is a similar case, but I can more readily understand if that was refused us, because it is perhaps a secret order. Number 20, the White Book --

THE PRESIDENT: (Interposing) Sir David didn't deal with 19, did he? He only dealt with 16, 17, 20 and 21.

DR. EXNER: Yes. 18 and 19 have not been objected to.

THE PRESIDENT: As I understood it, his objection to 16 and 17 was that there was no complaint against the German forces, either with reference to close combat or with reference to shackling, in the Indictment.

DR. EXNER: If, by any chance, in these close combat battle orders, there are pictures there, or if it is ordered that the prisoners should be shackled, then one would be obliged to state that the British Government does not have the point of view that this sort of behavior is illegal. If, then, such things are done on our side we cannot be reproached with them. But, as I said, it is difficult for me to say anything on the subject of why that is important to us, because I haven't seen these rules for conducting close combat warfare. If I had them in my hands I could then make an application. I would know whether I wanted to submit them in evidence or whether I did not need them.

No objection has been raised to 18 and 19. 20 is the White Book that

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has already been approved for Goering. Consequently, I need not ask for them myself.

Regarding Point 21, I am of the conviction that this cannot be settled with a charge of tu quoque. It is here a question of a Russian book, which describes the fight against the partisans. The author of this book is a Russian who himself was chief of staff or some such thing in partisan warfare for several years, and he writes from personal experience.

We do not assert that the Russians would have done the same thing that we did, which would be a tu quoque argument; but I should like to have this book for another reason. If one is to understand our regulations pertaining to partisans, then one must know these partisans. One must understand them, know how they worked, and one must be able to evaluate their danger. This Russian book describes all that, and is, consequently, important. The author was himself active in partisan warfare.

In the Indictment it is said that the partisan warfare was simply an excuse that we used for the annihilation of Jews, Slavs, and so on. One will be able to see from this book that this partisan warfare was a real war of vast extent and was not an excuse on our part.

The book is not to be obtained. I ask permission to read a short report on it that was recently published in the "Stars and Stripes" regarding the contents of this book. It should be emphasized that the book was written by a Soviet Russian. It cannot be assumed that it is solely inimical to Russia.

Therewith I have concluded my presentation.

THE PRESIDENT: Sir David, the Tribunal would like to know what your argument is with reference to 21.

SIR DAVID MAXWELL-FYFE: I was opposing it on the reason that it was given. The book is asked for as evidence that the danger of bandit warfare gave rise for undertaking sweeping counter measures.

Now, broadly, the case for the Prosecution is that the counter measures against partisans constituted atrocities, and evidence of that kind has been given. It is, in my submission, no defense to the committing of atrocities of the kind given in evidence against partisans that their warfare was of a great extent or very fiercely or bravely waged. This is just the tu quoque

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argument in its nakedness, that because partisans fight you, therefore you can burn their villages, shoot their women, and kill their children. That is the argument which we say is irrelevant and is inadmissible.

My Lord, I should like to say that I have no objection, if any of these documents can be obtained, to Dr. Exner looking at the documents, but I must on thatpoint to which the Prosecution attachedimportance, I thought it right -- and I know my colleagues desired it -- that I should make our position clear.

THE PRESIDENT: That concludes your address, Dr. Exner, does it?

DR. EXNER: May I say something regarding what Sir David just said? I am, of course, perfectly aware that those terrible cruelties, as they were here described, cannot be justified by the activities of the partisans, but the more violent the partisan measures became, the more sharply the Germans had to take counter measures. For this reason there is a connection.

THE PRESIDENT: The Tribunal will consider your argument.

The Tribunal will now adjourn.

(The Tribunal adjourned until 7 March 1946, at 1000 hours.)